

## Henderson, Ginny

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**From:** Henderson, Ginny  
**Sent:** Tuesday, May 24, 2011 2:23 PM  
**To:** 'jeff.becken@catlinusa.com'  
**Cc:** 'nicole.cory@fhr.com'  
**Subject:** RE: Meeting  
**Attachments:** stdagreementRAonly\_091710.doc

Jeff,  
I've attached the standard draft Administrative Agreement (AA). I also forgot to mention this morning that there is a fee of \$1,000 that must be submitted before an AA can be finalized. If you have any questions, just let me know.

Ginny Henderson  
Hydrogeologist  
North Carolina Dept. of Environment & Natural Resources  
Div. of Waste Mgt. - Superfund Section - Inactive Hazardous Sites Branch  
Wilmington Regional Office  
127 Cardinal Drive Extension  
Wilmington, NC 28405  
Ph: (910) 796-7215 Fax: (910) 350-2004  
[ginny.henderson@ncdenr.gov](mailto:ginny.henderson@ncdenr.gov)

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

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**From:** Jeff Becken [<mailto:jeff.becken@catlinusa.com>]  
**Sent:** Tuesday, May 24, 2011 12:06 PM  
**To:** Henderson, Ginny  
**Subject:** Re: Meeting

Dimitri Talbert

Thanks again for your time and advice.  
Jeff

Jeffery K. Becken, P.E.  
CATLIN Engineers and Scientists  
220 Old Dairy Road  
Wilmington, North Carolina 28405  
Phone: [910-452-5861](tel:910-452-5861)  
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On May 24, 2011 10:53 AM, Henderson, Ginny <[ginny.henderson@ncdenr.gov](mailto:ginny.henderson@ncdenr.gov)> wrote:

Jeff,  
What was Dmitry's (sp?) last name? I am writing up my summary of the meeting and would like to include his correct name. Thanks.

Ginny Henderson  
Hydrogeologist  
North Carolina Dept. of Environment & Natural Resources  
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**NORTH CAROLINA DEPARTMENT OF ENVIRONMENT  
AND NATURAL RESOURCES  
DIVISION OF WASTE MANAGEMENT  
SUPERFUND SECTION**

**IN RE:**

**, NORTH CAROLINA  
COUNTY  
(insert ID#)**

**ADMINISTRATIVE AGREEMENT  
FOR STATE-DIRECTED REMEDIAL ACTION  
PURSUANT TO N.C.G.S. § 130A-310.9(b)**

**DOCKET NUMBER \_\_-SF-\_\_**

The following constitutes the agreement of the parties hereto. \_\_\_\_\_  
(\_\_\_\_\_) concurs with the conclusions of law contained herein solely for purposes  
of this Administrative Agreement (Agreement).

**I. JURISDICTION**

This Agreement is entered into under authority vested in the Secretary of the North Carolina Department of Environment and Natural Resources (Department) by North Carolina's Inactive Hazardous Sites Response Act of 1987 (the Act), which constitutes Part 3, Article 9 of Chapter 130A of the North Carolina General Statutes (N.C.G.S.) §§ 130A-310 *et seq.* This authority has been delegated to the Chief of the Superfund Section (Chief) of the North Carolina Division of Waste Management (Division).

**II. STATEMENT OF PURPOSE**

This Agreement is entered into for the purpose of addressing the hazardous substance or waste disposal site (the Site) defined in Subsection III. A. of this Agreement. In entering into this Agreement, the objective of the Division and \_\_\_\_\_ is for \_\_\_\_\_ to implement a voluntary remedial action program approved by the Division involving: (1) preparation and implementation of a Remedial Action Plan and (2) reporting of progress of implementation of the approved Remedial Action Plan.

**III. STIPULATIONS OF FACT**

A. "The Site" is the property currently owned by \_\_\_\_\_ at \_\_\_\_\_ and any additional area which has become contaminated as a result of hazardous substances or waste disposed at that property.

B. \_\_\_\_\_ conducted \_\_\_\_\_ at the Site from \_\_\_\_\_ through \_\_\_\_\_.

- C. Soil sampling at the Site has revealed the presence of \_\_\_\_\_. This is not a comprehensive list of contaminants present at the Site and the remedial investigation and remedial action are not limited to this list of compounds.
- D. Groundwater sampling at the Site has revealed the presence of \_\_\_\_\_. This is not a comprehensive list of contaminants present at the Site and the remedial investigation and remedial action are not limited to this list of compounds.

#### IV. CONCLUSIONS OF LAW

- A. The substances identified in Subsections III. \_\_\_\_\_ and \_\_\_\_\_ above are hazardous substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act/Superfund Amendments and Reauthorization Act, 42 U.S.C. §§ 9601 *et seq.*, and are thus such substances for purposes of the Act pursuant to N.C.G.S. § 130A-310(2).
- B. The Site is an inactive hazardous substance or waste disposal site for purposes of the Act pursuant to N.C.G.S. § 130A-310(3).
- C. \_\_\_\_\_ is an owner, operator, or other responsible party in relation to the Site within the meaning of N.C.G.S. § 130A-310.9, pursuant to N.C.G.S. §§ 130A-310(4), -310(5), -310(9), and -310.7.
- D. Under N.C.G.S. § 130A-310.9(b), the Secretary, and by delegation, the Chief, is authorized to enter into agreements with owners, operators, or other responsible parties for implementation of voluntary remedial action programs as to inactive hazardous substance or waste disposal sites in accordance with remedial action plans approved by the Department.

#### V. WORK TO BE PERFORMED

All work performed pursuant to plans approved under this Agreement shall comply with the current Inactive Hazardous Sites Program Guidelines for Assessment and Cleanup.

- A. If the Division determines that hazardous substances or waste disposed at the Site have affected any drinking water wells, \_\_\_\_\_ shall, by a deadline established by the Division, provide an alternate drinking water source for users of those wells.
- B. Within ninety (90) days of execution of this, \_\_\_\_\_ shall submit to the Division a proposed Remedial Action Plan for cleanup of all contaminated media at the Site, developed using the Superfund Section's remediation goals as set out in the current Inactive Hazardous Sites Program Guidelines for Assessment and Cleanup

and organized in sections corresponding to the following items and including at least:

1. A statement of objectives for the Remedial Action.
2. A listing of potentially applicable technologies.
3. An evaluation of remedial alternatives using the following feasibility study criteria:
  - a. Protection of human health and the environment, including attainment of remediation goals.
  - b. Compliance with applicable federal, State and local regulations.
  - c. Long-term effectiveness and permanence.
  - d. Reduction of toxicity, mobility and volume.
  - e. Short-term effectiveness: effectiveness at minimizing the impact of the site remediation on the environment and the local community.
  - f. Implementability: technical and logistical feasibility, including an estimate of time required for completion.
  - g. Cost.
  - h. Community acceptance.
4. A detailed description of \_\_\_\_\_'s preferred remedial alternative for each contaminated medium, from among the alternatives evaluated, including an evaluation of potential impact to any sensitive environments identified on or near the Site and construction designs and specifications (any proposed treatment technology may require on-site testing or bench-scale testing of site waste to verify its effectiveness).
5. A description of all activities that are necessary to ensure that the proposed method(s) of remedial action is (are) implemented in compliance with applicable laws and regulations, that remediation goals established by the Division are met and that the health and safety of nearby residential and business communities will not be adversely affected by activities related to the remedial action. These activities include, but are not limited to, well installation and abandonment, sampling, run-on/run-off control, dust suppression and discharge of treated waste streams.
6. The results of any treatability studies or site characterization work conducted in support of the proposed Remedial Action Plan.
7. A description of any proposed treatability studies or additional site characterization work needed to support the remedial design.
8. A description of methods of post-remedial and confirmatory sampling, and any necessary maintenance.

9. A contact name, address and telephone number for the principal consultant and laboratory, and qualifications and certifications of all consultants, laboratories and contractors expected to perform work in relation to this Remedial Action Plan. Any laboratory retained must be either certified to analyze applicable certifiable parameters under Title 15A of the North Carolina Administrative Code, Subchapter 2H, Section .0800, or be a contract laboratory under the EPA Contract Laboratory Program.
  10. Equipment and personnel decontamination procedures.
  11. A proposed schedule for completion of remedial design and for Remedial Action construction, implementation and periodic sampling and reporting.
  12. [Begin paragraph with either: *A signed and notarized certification by a company official with the express authority to bind the company* for businesses or *Your signed and notarized certification* for individual owners] stating: "I certify that, to the best of my knowledge, after thorough investigation, the information contained in or accompanying this certification is true, accurate, and complete."
  13. A signed and notarized certification by the consultant responsible for the day to day remedial activities stating: "I certify that, to the best of my knowledge, after thorough investigation, the information contained in or accompanying this certification is true, accurate, and complete."
  14. If this document includes any work that would constitute the "practice of engineering" as defined by N.C.G.S. § 89C, the signature and seal of a professional engineer must be included. If this document includes any work that would constitute the "public practice of geology" as defined by N.C.G.S. § 89E, the signature and seal of a licensed geologist is required.
- C. \_\_\_\_\_ shall provide to the Division the number of additional copies of the proposed Remedial Action Plan determined by the Division to be required for distribution to the local health director, register of deeds, and each public library in the county where the Site is located, if requested by the Division. The Division shall also mail notice of the Remedial Action Plan to those who have requested notice that such plans have been developed, as provided in N.C.G.S. § 130A-310.4(c)(2). The Division will not approve the Remedial Action Plan until at least thirty (30) days after public notice was provided.
- D. Within thirty (30) days of receiving notice from the Division of any deficiency in the Remedial Action Plan, \_\_\_\_\_ shall submit to the Division information or material sufficient to correct such deficiency.

- E. \_\_\_\_\_ shall begin implementation of the Remedial Action Plan no sooner than receiving written approval from the Division nor later than sixty (60) days thereafter.
- F. Any requests for modifications of the approved Remedial Action Plan must be submitted in writing to the Division, and may not be incorporated or implemented unless and until approved in writing by the Division.
- G. \_\_\_\_\_ shall provide to the Division:
1. Weekly written or telephone progress reports each \_\_\_\_\_ during the soil and waste remedial action if less than one (1) month in duration;
  2. Quarterly reports during: (a) groundwater remedial action, (b) any soil and waste remedial action greater than one (1) month in duration, and (c) any necessary post-remedial maintenance;
  3. A final report with confirmatory sample data documenting complete implementation of the approved Remedial Action Plan.

Note 1: The quarterly reports and final report should include, without limitation, complete "as-built" drawings and specifications of all remedial action systems; tabulated laboratory data; the location and depth of samples collected; a description of all field and laboratory quality control/quality assurance procedures; and legible and complete copies of all records of periodic system inspections, laboratory reports, waste manifests and chain of custody documentation generated during the reporting period. Quarterly reports shall be provided by the tenth day after each quarter concludes, with the first quarter commencing on the date of written approval of the Remedial Action Plan by the Division. The final report shall be provided within one (1) month following complete implementation of the approved Remedial Action Plan.

Note 2: Each progress report and the final report shall contain the certifications specified in Subsections V.B.12, V.B.13, and V.B.14 of this Agreement.

- O. Within thirty (30) days of receiving notice from the Division of any deficiency in the reports required by Subsection V.G. or in the implementation of the plans required by this Agreement, \_\_\_\_\_ shall submit to the Division information or material sufficient to demonstrate correction of such deficiencies.

## VI. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

- A. The Division or its representatives may take split or duplicate samples of any samples collected by \_\_\_\_\_ pursuant to this Agreement.

\_\_\_\_\_ shall notify the Division not less than ten (10) days in advance of any field activity. This notification may be given verbally in the field by \_\_\_\_\_ to the Division.

- B. The Division or its representatives may conduct any field activity it deems appropriate in relation to the Site. \_\_\_\_\_ may take split or duplicate samples of any samples collected by the Division during such field activity.
- C. While this Agreement is in effect, Division personnel and their representatives may, in addition to exercising any related legal rights, enter the Site without notice at all times and, while present: review the progress of activities required by this Agreement; conduct such tests as the Division deems necessary; verify the data submitted to the Division by \_\_\_\_\_; inspect and copy any and all records, files, photographs, operating logs, contracts, sampling and monitoring data, and other documents relating in any way to this Agreement; and otherwise assess \_\_\_\_\_'s compliance with this Agreement. All parties with access to the Site pursuant to this Agreement shall comply with all approved health and safety plans.
- D. Unless a confidentiality claim covering information provided under this Agreement is made pursuant to law and adequately substantiated when the information is submitted, such information may be made available to the public by the Division without further notice to \_\_\_\_\_. \_\_\_\_\_ agrees that under no circumstances shall analytical data generated pursuant to this Agreement be considered confidential.
- E. \_\_\_\_\_ waives any objections to the admissibility into evidence (but not objections as to the weight) of the results of any analyses of sampling conducted by or for \_\_\_\_\_ at the Site or of other data gathered pursuant to this Agreement.
- F. If \_\_\_\_\_ is unable by reasonable efforts to gain access to other property as necessary pursuant to this Agreement, the Division shall assist \_\_\_\_\_ in obtaining access.

## VII. DELAY IN PERFORMANCE

As soon as \_\_\_\_\_ is aware of the potential for delay, it shall submit to the Division written documentation of the reasons for the delay and the efforts made by \_\_\_\_\_ to avoid the delay, as well as a time by which such work can be completed. The Division shall review the documentation and shall promptly approve the new schedule if good cause is shown. Good cause may include, but is not limited to, extraordinary weather, natural disasters and national emergencies. At a minimum, good cause does not include normal inclement weather, increases in the cost of work to be performed under this Agreement, financial difficulty for \_\_\_\_\_ in performing such work, failure



Docket # \_\_\_\_\_ -SF- \_\_\_\_\_

by \_\_\_\_\_ to satisfy its obligations under this Agreement (whether evidenced by a notice of deficiency or not), acts or omissions of \_\_\_\_\_'s contractors or representatives not otherwise constituting good cause, and failure by \_\_\_\_\_ or its contractors or representatives to make complete and timely application for any required approval or permit. The burden of demonstrating good cause for delay, and that the delay proposed is warranted, is \_\_\_\_\_'s.

#### VIII. ADDITIONAL PROVISIONS

- A. All documents submitted to the Division shall be delivered to:

\_\_\_\_\_  
Inactive Hazardous Sites Branch  
North Carolina Department of Environment and Natural Resources  
[Fill in Address]  
[City, NC Zip]

All work plans and reports shall be submitted in both paper and in an electronic format designated by the Division. Currently, electronic copies shall be submitted in PDF/A format with a minimum resolution of 300 dpi.

The Division will direct all correspondence related to this Agreement to:

\_\_\_\_\_  
[Fill in Contact Name]  
\_\_\_\_\_  
[Street Address]  
\_\_\_\_\_  
[City, State Zip]

- B. This Agreement shall be binding upon, and inure to the benefit of, \_\_\_\_\_, its agents, successors and assigns. The signatory for \_\_\_\_\_ to this Agreement certifies that he/she is authorized to execute and legally bind \_\_\_\_\_ as to this Agreement.
- C. \_\_\_\_\_ shall provide a copy of this Agreement to each contractor or other person or entity retained to perform any work under this Agreement within seven (7) days after the effective date of this Agreement or the date of retaining their services, whichever is later. \_\_\_\_\_ shall condition any such contracts upon satisfactory compliance with this Agreement. Notwithstanding the terms of any contract, \_\_\_\_\_ is responsible for compliance with this Agreement and for ensuring that such contractors or other persons or entities comply with this Agreement.
- D. This Agreement notwithstanding, the Division retains all its authority regarding inactive hazardous substance or waste disposal sites in relation to the Site.
- E. All actions required pursuant to this Agreement shall be in accordance with applicable

local, state and federal laws and regulations, unless an exemption regarding particular state or local laws or regulations is specifically provided in this Agreement now or later.

- F. \_\_\_\_\_ agrees to indemnify and save and hold harmless the State of North Carolina, and its agencies, departments, officials, agents, employees, contractors and representatives, from any and all claims or causes of action arising from or on account of acts or omissions of \_\_\_\_\_ or its officers, employees, receivers, trustees, agents, contractors, or assigns in carrying out actions required pursuant to this Agreement. Neither the State of North Carolina nor any agency or representative thereof shall be held to be a party to any contract involving \_\_\_\_\_ relating to the Site excluding, however, this Agreement.
- G. \_\_\_\_\_ shall preserve, for at least six (6) years after termination of this Agreement, all records and documents in its possession or in the possession of its divisions, employees, agents, accountants, contractors or attorneys which relate in any way to this Agreement. After this six (6)-year period, \_\_\_\_\_ shall notify the Division at least thirty (30) days prior to the destruction of any such records and documents. \_\_\_\_\_ shall comply with any written request by the Division, prior to the day set for destruction, to continue to preserve such records and documents or to provide them to the Division. \_\_\_\_\_ may assert any available right to keep particular records and documents, other than analytical data, confidential.
- H. This Agreement may not be modified without the written consent of the parties.
- I. Except for obligations under Subsections VI.E., VIII.F. and VIII.G., this Agreement shall terminate when \_\_\_\_\_ receives written notice from the Division that all activities required pursuant to this Agreement have been completed to the Division's satisfaction.
- J. This is a voluntary agreement. If \_\_\_\_\_ elects to discontinue implementation of work under this Agreement, \_\_\_\_\_ shall notify the Division in writing of such intent, and except for rights and obligations under Subsections VI.E., VIII.F. and VIII.G., this Agreement shall be dissolved upon the Division's receipt of such written notice. If the Division determines that \_\_\_\_\_ is not complying with the terms of this Agreement in a timely manner, the Division may notify \_\_\_\_\_ in writing of such determination, and the Agreement shall be dissolved upon \_\_\_\_\_'s receipt of such written notice. Further, should the United States Environmental Protection Agency (EPA) list the Site, or any portion of it, on the National Priorities List (NPL), should the Site score high enough for listing on the NPL, or should the Division state in writing to \_\_\_\_\_ that it desires that the EPA not be limited in its authority under any portion of the Comprehensive Environmental Response, Compensation and Liability Act, codified at 42 U.S.C. §§ 9601 to 9675, by the existence of this Agreement, then either party may dissolve this Agreement except of the rights and

obligations under Subsections VI.E., VIII.F. and VIII.G. Dissolution on the basis of NPL scoring or to remove any bar to EPA's authority shall be without prejudice to either party to enter into an Administrative Agreement at a later date if allowed by, and subject to, North Carolina law then existing regarding Administrative Agreements. In any of these events, neither party may seek judicial review of the dissolution of this Agreement or has any right, claim or action for breach of this Agreement. In any of these events, the Division shall retain all its applicable enforcement rights against \_\_\_\_\_, and \_\_\_\_\_ shall retain all applicable defenses. Notwithstanding the foregoing or the subsequent dissolution of this Agreement, Subsections VI.E., VIII.F., and VIII.G., and the rights, obligations and duties contained therein, shall survive the dissolution of this Agreement.

The effective date of this Agreement shall be the date on which it is executed by the Secretary or his Authorized Agent.

Date Executed: \_\_\_\_\_

By: \_\_\_\_\_

Jack Butler, PE  
Superfund Section Chief  
Division of Waste Management  
North Carolina Department of Environment  
and Natural Resources

By: \_\_\_\_\_

\_\_\_\_\_  
[Fill in Name of Signatory and Title]

\_\_\_\_\_  
[Company Name]